

Consultation and Habitat Conservation Planning

Program Element		FY 2005 Actual	FY 2006 Enacted	FY 2007			Change From 2006 (+/-)
				Fixed Costs & Related Changes (+/-)	Program Changes (+/-)	Budget Request	
Consultation and Habitat Conservation Planning	\$(000) FTE	47,281 447	47,997 447	+927 -	+413 +5	49,337 452	+1,340 +5

Summary of FY 2007 Program Changes for Consultation and Habitat Conservation

Request Component	Amount	FTE
Program Changes		
• General Consultation	+471	+5
• Program Management Savings	-58	0
Total, Program Changes	+413	0

Justification of 2007 Program Changes

The FY 2007 budget request for Consultation is \$49,337,000 and 452 FTE, a net program increase of \$413,000 and 5 FTE from the 2006 enacted level.

General Consultation (+471,000) - The Service anticipates a five percent increase in the number of formal and informal consultations on energy-related projects in FY 2007 compared to FY 2006. The requested increase of \$471,000 would allow the Secretary to complete an additional 105 formal and informal energy consultations in a timely manner.

The Service's consultation workload grows each year as a result of a healthy economy and increased demand for energy. Nearly all field offices currently have vacancies in consultation positions. Field biologists are critical to providing the technical assistance and support as well as biological assessment review that must be completed for any consultation. The Service proposes to target this increase to fill some of the existing vacancies in offices with the greatest energy-related consultation workload, specifically the offices working on energy use and development on BLM lands in the west. Section 365 of the Energy Policy Act provides funding to BLM to reimburse FWS for energy related consultation in BLM "pilot" districts. However, BLM districts that are not part of the pilot will also have a significantly increased workload. The requested funding increase for FY 2007 will provide the consultation biologists needed to meet the increased work associated with the Energy Policy Act. Without the requested increase, the Service's ability to provide timely and effective consultation assistance on these kinds of energy projects will be reduced.

Program Management Savings (-\$58,000) - To enable the Service to address its highest priorities during constrained fiscal times, the Service proposes reducing program administrative funding by \$1,980,000. Using Activity Based Cost information and other budgetary analyses the Service anticipates achieving a savings of \$58,000 in Consultation. These savings will be realized by streamlining program administrative support activities.

Program Performance Change Table

Total Performance Change		+105 timely formal and informal energy consultations			
	A	B	C	D=A+B+C	E
	Overall Performance Changes from 2006 to 2007				
Measure	2006 Enacted Performance	2007 Base Performance	2007 Impact of Program Change on Performance	2007 Budget Request Performance	Out-year Impact of 2007 Program Change on Performance
Percent of formal and informal energy consultations addressed in a timely manner (BUR)	87% (3,720 / 4,289)	88% (3,948 / 4,504)	+2% +105	90% (4,053 / 4,504)	-
Column B: The performance level expected to be achieved absent the program change (i.e., at the 2006 request level plus/minus funded fixed cost/related changes); this would reflect, for example, the impact of prior year funding changes, management efficiencies, absorption of fixed costs, and trend impacts.					
Column E: The out-year impact is the change in performance level expected in 2008 and Beyond of ONLY the requested program budget change; it does <u>not</u> include the impact of receiving these funds again in a subsequent outyear.					

Program Overview

The Consultation program is the primary customer service component of the Endangered Species program and makes an important contribution to the Service's resource use and resource protection mission goals. The Consultation program element includes two primary components, the Section 10 Habitat Conservation Planning program and the Section 7 Consultation program. The Service works with private landowners and local and state governments through the Habitat Conservation Planning program to develop Habitat Conservation Plans (HCPs) and their associated Incidental Take Permits. By working with non-federal entities to develop and implement HCPs, the Service identifies conservation measures to benefit species and habitats promoting the stabilization and improvement of endangered, threatened, and at-risk species. The Service works with federal agencies and project applicants through the Section 7 Consultation program to ensure the activities they carry out, fund, or authorize are compatible with the conservation needs of listed species. The Service's Consultation program embodies the "Four C's," conservation through cooperation, consultation, and communication. Service personnel actively work with State and local partners to achieve common conservation goals.

The Consultation program contributes directly to the Department's strategic goal to sustain biological communities on Department managed and influenced lands, in the Resource Protection mission component, and the Service's associated proposed mission goal of "Conservation Leadership for Fish, Wildlife, and Their Habitats." The Department's relevant end outcome measure is the percentage of species that have been listed for a decade or more that are in stable or improving condition. In addition, the Consultation program contributes to the Department's Resource Use strategic goals, through the Service's proposed mission goal of "Biological Expertise to Others." Under this mission component, the Department's relevant end outcome goal is to manage or influence resource use to enhance public benefit and promote responsible use.

The Service continually looks for additional ways to streamline the consultation process. For example, the Service recently completed a programmatic consultation for wind energy development with BLM that projects 160,000 acres of additional wind energy development in the foreseeable future, with many of these projects requiring site-specific consultation. In a related effort, the Service has begun working with BLM to address the upcoming consultation workload for energy corridor projects throughout the western states. The Service is also working closely with the Office of Pipeline Safety to develop tools to

streamline consultations on the thousands of upcoming pipeline repair projects. These three examples highlight the importance of the Service's role in bringing these projects to fruition.

Section 10(a)(1)(B) - Habitat Conservation Planning

Section 10(a)(1)(B) of the Endangered Species Act (ESA) provides for the permitting of the incidental take of threatened and endangered species. The Service's incidental take permit program is a flexible process for addressing situations in which a property owner's otherwise lawful activities might result in incidental take of a listed species. Using the best scientific information available, non-federal entities develop HCPs as part of the application requirements for an incidental take permit. The HCP program encourages applicants to explore different methods to achieve compliance with the ESA and choose an approach that best suits their needs while addressing ESA compliance. For example, electrified fences surrounding many of the California Department of Corrections facilities cause mortality when species contact the fence. Concerned that a listed species would eventually encounter the fence, the Department of Corrections worked with the Service to incorporate measures that minimize the possibility of contact. The HCP developed by the State of California Corrections facilities continued on-going efforts to minimize impacts to 11 listed and sensitive species including the bald eagle, San Joaquin kit fox and desert tortoise while maintaining the ability to safeguard corrections facilities throughout California.

The HCP program's major strength is that it encourages locally developed solutions to wildlife conservation while providing certainty to permit holders. Local entities and private landowners are given assurances they will not be required to make additional commitments of land, water, or money, or be subject to additional restrictions on the use of land, water, or other natural resources, for species adequately covered by a properly implemented HCP.

HCPs continue to increase in complexity, size, and number of species addressed. While the program has existed since 1983, it has grown in recent years with more than 41 million acres of land covered by HCPs at the end of fiscal year 2005, compared to about 6 million acres at the beginning of fiscal year 1999. HCP planning areas can be as small as a single, private residential property of less than an acre, or as large as entire counties, or, in some cases, entire States.

Integration of the HCP process with local land-use planning occurs more frequently. Many local governments recognize the advantages of integrating planning needs and have taken the planning approach beyond just endangered species issues to comprehensively address environmental issues. As a result, these integrated, comprehensive planning efforts have become more complex and require a large amount of time and money to develop. However, in the long run, incorporating the HCP incidental take permit process into the more comprehensive local planning efforts saves local landowners time in obtaining permits for their projects. An example of this coordination is the permit approved in January 2005 for the City of Chula Vista in southern California. This permit covers a wide variety of developmental activity in the nearly 60,000 acres of the planning area while providing for the conservation needs of approximately 90 species.

To foster landscape- and ecosystem-level approaches to planning, the Service encourages applicants for Section 10 permits to address multiple species, including proposed and candidate species as well as listed species, in their HCPs. Including candidate and at-risk species in their HCPs gives landowners and local governments the opportunity to take a more holistic approach to conservation and to minimize future conflicts. This type of regional planning benefits numerous species within an ecosystem and streamlines ESA compliance for the small landowners within the planning area. In addition, by covering candidate and at-risk species in an HCP, landowners can avoid potential future disruptions in project planning and implementation, should one or more of these covered, unlisted species be listed.

Service involvement in the HCP process does not end once an HCP is approved. The Service often participates on HCP implementation steering committees, and provides additional technical support for managing and operating conservation programs. The Service also works with permittees to monitor compliance as well as process HCP amendments and renewal requests. In addition, the Service monitors HCPs to determine whether the mitigation strategies are effective and whether the anticipated effects are actually occurring, and assist permittees in implementing their adaptive management strategies.

Adaptive management is used by applicants and the Service to develop effective, flexible HCPs. Creating results-based HCPs rather than simply fulfilling a list of prescriptive actions not only increases flexibility for the permittees, but promotes the desired biological outcomes. In addition, a results-oriented program (based on an adaptive management strategy) actually provides certainty to the permittees by establishing the framework to modify the HCP when necessary. Results are periodically assessed, and, if shortcomings are evident, previously agreed-upon alternative strategies are implemented, thereby reducing conflict between the Service and permittees regarding ESA compliance.

Section 7 - Interagency Consultation

Section 7 of the ESA requires federal agencies to use their authorities to further the purposes of the ESA, including an obligation to ensure that activities they authorize, fund, or carry out do not jeopardize the continued existence of listed species or destroy or adversely modify their designated critical habitat. For example, U.S. Forest Service (USFS) or Bureau of Land Management (BLM) approval of livestock grazing on federal lands, or the U.S. Army Corps of Engineers approval of discharge of fill material into waters of the U.S., requires Section 7 consultation when these activities may affect listed species.

Non-federal applicants play a large role in the consultation process. Many of the federal actions subject to Section 7 consultation, such as grazing allotments or timber sales on federal lands and permits issued under the Clean Water Act, involve non-federal applicants. Section 7 of the ESA and its implementing regulations provide non-federal applicants a role in all phases of the interagency consultation process. A prospective applicant may request federal agencies conduct an early consultation to discover and attempt to resolve potential conflicts early in the planning stages of a project. The Service and the authorizing federal agencies rely on the participation of non-federal partners to develop methods for providing species protection consistent with their projects.

Coordination between the Service, other federal agencies, and their applicants during consultation is critical to ensure that the design of projects does not jeopardize listed species or destroy or adversely modify designated critical habitat. For example, the Service works with the USFS, BLM, and a variety of local governments to implement hazardous fuels reduction projects to reduce the risk of catastrophic wildfires while ensuring these projects do not jeopardize endangered and threatened species. In some instances, these fuels reduction projects can have an overall benefit to listed species that are themselves vulnerable to catastrophic wildfire; the consultation process helps ensure these benefits are achieved while minimizing the possible immediate adverse impacts of the projects on listed species.

The Service actively encourages federal agencies and their applicants to informally consult as early as possible in the project planning process for the purpose of identifying and resolving endangered species conflicts while the project design is still flexible. The Service informally resolves the vast majority of consultations by working with the action agency and the applicant to avoid adverse effects to listed species or their designated critical habitat. Throughout the Section 7 process, the Service works with federal partners and their applicants to develop alternatives or project modifications, where necessary, that accomplish the purpose of the action while avoiding adverse effects. During consultation with federal agencies it is essential to coordinate and work closely with affected states and tribes, sharing information and seeking solutions to common problems. Although early coordination increases workload

at the beginning of a consultation, it is the key to avoiding costly delays during the consultation process and minimizing the potential for conflicts later.

Formal consultation is required when an action, as proposed, cannot be implemented without adversely affecting a listed species or its designated critical habitat. During formal consultation, the Service, the action agency, and the applicant work closely to identify and minimize the effects of the project to listed species and their habitats. The Service then develops a biological opinion that:

- States whether the proposed action is likely to jeopardize any listed species or destroy or adversely modify any designated critical habitat;
- Describes any reasonable and prudent alternatives to the project that avoid jeopardizing a species or adversely modifying critical habitat, if a jeopardy or adverse modification finding is made; and,
- Describes and authorizes any incidental take anticipated from the proposed action.

The Service also provides terms and conditions to minimize the impact of this incidental take upon the species. This important component of the Section 7 process allows federal actions to move forward even though they might result in the incidental taking of listed species. The biological opinion also includes conservation recommendations that the federal agency may choose to implement. Those conservation recommendations and other measures included in the project may have beneficial results for non-listed species as well, and may reduce the potential that those species may eventually require listing.

The Service's section 7 workload (requests for consultation) has increased in recent years. Our consultation workload has grown from 40,000 requests in 1999 to 77,000 requests for technical assistance or consultations for Section 7 compliance in FY 2005. This increase in demand makes it essential that we identify techniques for streamlining section 7 review for individual projects. Programmatic consultations are another method for managing the increasing consultation workload. Effective and adaptive consultation practices and the availability of well-trained staff have been, and will continue to be, the primary factors in maintaining our remarkable rate of success.

Additionally the Service works with action agencies during project implementation to monitor the effectiveness of conservation actions included in biological opinions. Information from monitoring allows modification, when necessary, of actions to ensure that effects of the action are what was anticipated in the biological opinion. Effective monitoring may also streamline future consultations and reduce future requirements for agencies and applicants.

2007 Program Performance Estimates – Consultation and HCP

- Provide an additional 105 timely formal and informal energy consultations as described at the beginning of the Consultation section.
- Provide technical assistance to customers that will result in the approval of HCPs that result in an increase of approximately 40,500 acres. The number of acres covered by HCPs will increase to over 40,590,000 acres, benefiting more than 600 listed and non-listed species.
- Continue to work with all our federal customers to design projects that will not have adverse impacts on listed species, especially consultations associated with energy projects.
- Assist EPA's Office of Pesticide Programs in evaluating the effects of approximately five pesticide products on listed species and critical habitat.
- As part of a multi-year effort, complete formal consultations with EPA on approximately 10 aquatic life criteria used by states and tribes to establish water quality standards.
- Continue to seek ways to work with other Federal agencies on programmatic consultations and training opportunities to streamline the consultation process.

2006 Planned Program Performance – Consultation and HCP

Projected accomplishments include:

- Provide technical assistance to customers that will result in the approval of about 30 HCPs, increase the number of acres covered by HCPs to approximately 40.5 million acres, and increase the number of listed and non-listed species covered by HCPs to more than 600. In addition, we expect to be involved in the development of approximately 300 HCPs covering approximately 30 million acres.
- Continue to work with all our federal customers to design projects that will not have adverse impacts on listed species. Based on past years' consultations, we expect to receive requests for approximately 77,000 consultations, including an estimated 3,700 formal consultations and 30 programmatic consultations.
- Assist EPA's Office of Pesticide Programs in evaluating the effects of approximately five pesticide products on listed species and critical habitat.
- As part of a multi-year effort, complete formal consultations with EPA on approximately 10 aquatic life criteria used by states and tribes to establish water quality standards.
- Complete consultation with the Animal and Plant Health Inspection Service on their animal damage control program.

2005 Program Performance Accomplishments – Consultation and HCP

Some significant actions the Service achieved in FY 2005 include:

- Worked with all our federal customers to design projects that will not have adverse impacts on listed species. Completed formal consultations for more than 3,300 federal actions and received requests for technical assistance to or informal consultation for approximately 73,000 other federal actions.
- Provided technical assistance to customers that resulted in the approval of 79 HCPs, increased the number of acres covered by HCPs to over 40.3 million acres of land, and increased the number of listed and non-listed species covered by HCPs to 601. HCPs that were permitted in FY 2005 include Bastrop Utilities (TX), Indian River County Sea Turtle (FL), Lower Colorado River MSCP (AZ, CA, NV), Virginia-Carolina RCW HCP (VA), and Westlake Ranch HCP (OR).
- Began working with EPA's Office of Pesticide Programs with registration and re-registration decisions for 10-15 pesticide products using the procedures provided for in the new counterpart regulations (50 CFR 402, subpart D) and trained 60 employees of EPA's Office of Pesticide Programs to use the authority to make "not likely to adversely affect" determinations under Section 402.45 of the Counterpart Regulations.
- Continued development of protocols to assess the effects to listed species of establishing aquatic life criteria used by states and tribes to establish water quality standards.
- Worked with the Animal and Plant Health Inspection Service to complete the programmatic consultation on the Wildlife Damage Management Activities.
- Continued to support development of approximately 20 regional HCPs under development in California, Nevada, Arizona, Texas, and Hawaii. These HCPs represent the continued high level of collaborative planning among local, state, and federal governments and the private sector. In southern California alone, these HCPs will address the needs of more than 17 million people and nearly 100 federally listed species in 4 of the fastest growing areas in the nation.
- In cooperation with the BLM and the USFS, worked to finalize a review of the first year of implementation of the counterpart regulations for completing consultations on hazardous fuels reduction projects carried out by Federal agencies under the National Fire Plan.
- Worked with the Office of Surface Mining (OSM) to deliver two sessions of a training program to Service, OSM, and State employees regarding the integration of section 7 consultation with the Surface Mining Control and Reclamation Act.